

Court No. - 4

Case :- WRIT - A No. - 18823 of 2024

Petitioner :- Anantu Sonkar

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Abhishek Ankur Chaurasia, Diwan Saifullah Khan

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar, J.

Heard Sri Abhishek Ankur Chaurasia, learned counsel for the petitioner and learned Standing Counsel.

By means of present petition filed under Article 226 of the Constitution, petitioner has questioned the order dated 22nd October, 2024 passed by Sub Divisional Magistrate, Varanasi dismissing the petitioner from employment on the basis of charges proved in enquiry report. This order has been challenged before this Court invoking extra ordinary jurisdiction under Article 226 of the Constitution as procedure prescribed for detailed enquiry for major penalty under Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999 has not been followed .

The main plank of the argument *qua* flaw in procedure is that no opportunity of oral enquiry to cross examine the departmental witnesses was given to the petitioner at any point of time. Learned counsel for the petitioner has placed the judgment of division bench of this Court in the case of **Salahuddin Ansari vs. State of UP & ors; 2008 (4) ADJ 58**, wherein the Bench has relied upon an earlier division bench judgment in the case of **Subhash Chandra Sharma vs. Managing Director & anr, MANU/UP/0757/1999** in which it was held that imposition of penalty in the nature of major penalty without holding inquiry was bad. The said judgment came to be affirmed by Supreme Court in SLP as the SLP against the judgment stood dismissed on 16.08.2000. Citing the aforesaid judgment and another judgment of the Supreme Court in the case of **State of UP & anr vs. T.P. Lal Srivastava; 1997 (1) LLJ 831**, the Division Bench in the case of **Salahuddin Ansari** (supra) vide paragraphs 11, 13 and 14, held thus:

"11. A Division Bench of this Court in Subhash Chandra Sharma Vs.

Managing Director & another, 2000 (1) U.P.L.B.E.C. 541, considering the question as to whether holding of an oral inquiry is necessary or not, held that if no oral inquiry is held, it amounts to denial of principles of natural justice to the delinquent employee. The aforesaid view was reiterated in Subhash Chandra Sharma Vs. U.P. Cooperative Spinning Mills & others, 2001 (2) UPLBEC 1475 and Laturi Singh Vs. U.P. Public Service Tribunal & others, Writ Petition No. 12939 of 2001, decided on 06.05.2005.

13. The aforesaid exposition of law makes it clear that the delinquent employee has a right to defend himself at different stages. When the charge sheet is served upon him, he has a right to submit his reply and in case he does not submit reply, that itself would not amount to admission of guilt or that the charge stand proved. If the allegations are serious and may result in major penalty, the disciplinary authority may appoint Inquiry Officer. Such Inquiry Officer, thereafter would have to fix a date for oral evidence. At this stage the delinquent employee has a right to participate in the oral inquiry, examine witnesses, if produced by the department, and after the evidence of the department is completed, the delinquent employee may produce evidence in his defence. During the course of oral inquiry, the delinquent employee has right to participate at every stage and date and if there is any failure in participation on one or more occasions, the Inquiry Officer cannot deny him participation from the subsequent stage. The delinquent employee can participate at subsequent other stage also. The Inquiry Officer, after completion of oral inquiry, will submit its report after discussing the entire material and if any charge is proved, the disciplinary authority shall supply a copy of the inquiry report to the delinquent employee and he would again have a right to submit reply to the inquiry report.

14. Non holding of oral inquiry, therefore, is a serious flaw which vitiates the entire disciplinary proceeding including the order of punishment."

It is contended that the above view has been subsequently followed by a Division Bench of this Court in **Special Appeal No.631 of 2007 (Janardan Prasad Yadav vs. State of UP & ors) passed on 20.02.2020 reported in MANU/UP/2547/2020.**

Learned Additional Chief Standing Counsel has placed original records of the disciplinary proceedings drawn against petitioner including departmental enquiry. From perusal of the original records, it transpires that notice was issued to the petitioner for the first time on 12th September, 2024 to appear before the authority, namely enquiry officer for oral examination. This notice was replied by the petitioner on 17.09.2024 seeking for testing of audio clip in particular by a scientific laboratory and also to grant some time to record his statement and also to as cross examine persons who had prepared this audio clip but no further time was afforded. From the record, it transpires that instead of fixing date in the matter of oral enquiry, the enquiry officer issued a notice to the petitioner on 24th September, 2023 to the effect that petitioner

would be informed telephonically about next date fixed. The petitioner though misunderstood this to mean that he was to cross examine on telephone, but as a matter of fact import of the letter was that he would be informed about the date on telephone, however, soon-after enquiry report came to be submitted by the enquiry officer on 30th September, 2024. It is interesting to notice that while petitioner was informed by letter dated 24th September, 2024 that he would be informed about the date to get his statement recorded and cross examine departmental witness in a week's time and yet within four days thereafter final enquiry report had been submitted on 30th September, 2024. Thus, it is apparent from the record itself that procedure prescribed to hold /conduct oral enquiry had not been followed.

In view of above, therefore the enquiry that led to the charge being proved and consequential dismissal of the petitioner, cannot be sustained in law. Hence consequential order of dismissal from service deserves to be set aside with liberty to respondents to initiate enquiry from the stage of charge-sheet afresh.

Accordingly, writ petition succeeds and is allowed. The order date 22.10.2024 dismissing the petitioner from employment passed by the Sub Divisional Magistrate, Varanasi filed as annexure no. 1 to the petition and also the enquiry report submitted by the enquiry officer dated 30th September, 2024 are hereby quashed.

Matter is remitted to the disciplinary authority to proceed with regular enquiry afresh from the stage of Petitioner had submitted his reply to the chargesheet. Proper enquiry will be held by fixing date requiring the petitioner to get his oral statement recorded as well as supplementary to cross examine the departmental witnesses shall also be afforded Audio clip which is sought to be utilized as electronic evidence (audio clip) shall also be put to test by a Scientific laboratory duly recognized and approved by the State/ Central Government. Status of the petitioner during enquiry shall be same as had been on the date of passing of order dated 22nd October, 2024 and petitioner shall be cooperating in the enquiry.

Original records are returned to the learned Standing Counsel.

Order Date :- 28.4.2025/Sanjeev